



May 24, 2001

Ms. Ann-Marie P. Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2001-2140

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147615.

The Travis County Sheriff's Office (the "sheriff's office") received a request for the "full report" of case number 01-4363. You claim that the requested information is excepted from disclosure under section 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a). In this instance, you state that the records at issue relate to a criminal prosecution that is ongoing. Based on your representation and our review of the submitted information, we conclude that you may withhold most of the requested information pursuant to section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Thus, you must release the types of basic information listed in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.<sup>1</sup>

Pursuant to section 552.108(c) the identity of a crime victim or complainant is not excepted from disclosure under section 552.108. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976). But in this instance, you seek to withhold the alleged crime victim’s identity and statements. You contend that the disclosure of this information “may well subject the [victim or witnesses] to intimidation and/or harassment or harm the prospect of their future cooperation with law enforcement authorities.” You argue that, under these circumstances, the victim’s identity and statements are protected from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information that is encompassed by the common law right to privacy. Information may be withheld under section 552.101 in conjunction with common law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

As a general rule, common law privacy does not protect the identity of a crime victim. See Open Records Decision No. 438 at 7 (1986) (stating that identity of a complainant, which generally is public information, may be withheld only in unique circumstances). Such information may be withheld under section 552.101 in conjunction with common law privacy only upon a showing of certain “special circumstances.” See Open Records Decision No. 169 (1977). This office considers such “special circumstances” to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. “Special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

We have considered your position. However, we do not believe that you have established the presence of special circumstances sufficient to justify the withholding of the alleged crime victim’s identity under section 552.101 and common law privacy. Therefore, you

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<sup>1</sup>In light of our conclusion under section 552.108, we need not address the applicability of sections 552.103 or 552.130 of the Government Code.

must disclose the victim's identity in releasing basic information. We note, however, that section 552.108(c) does apply to a statement obtained from a crime victim or a witness. *See* ORD 127 at 4. Thus, you may withhold the victim's statements under section 552.108(a)(1).

To summarize, we conclude that, with the exception of the basic information described in *Houston Chronicle*, you may withhold the submitted report under section 552.108(a)(1). You must disclose the victim's identity as this information is not excepted from disclosure under section 552.108 or under section 552.101 in conjunction with the common law right of privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Karen A. Eckerle".

Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 147615

Encl: Submitted documents

cc: Mr. Carlos Morales  
9420 Hwy. 183 S.  
Austin, Texas 78747  
(w/o enclosures)